

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CURT RICE,

Plaintiff,

v.

CIVIL ACTION NO. 3:14-CV-93 (Groh)

GREEN TREE SERVICING, LLC,

Defendant.

**GREEN TREE SERVICING, LLC'S
MOTION FOR SUMMARY JUDGMENT**

Green Tree Servicing, LLC, by its counsel, moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in its favor on the complaint filed against it by the plaintiff, Curt Rice.

In support of its Motion, Green Tree Servicing, LLC ("Green Tree") states as follows:

1. Plaintiff Curt Rice ("Plaintiff") obtained a loan on or about August 24, 2006 in the original principal amount of \$355,550 ("Loan"), which loan is secured by a Deed of Trust that encumbers Plaintiff's residential real property at 97 Stephanie Way, Charles Town, West Virginia ("Property").

2. Plaintiff was required to purchase and maintain Private Mortgage Insurance ("PMI") on his Loan.

3. PMI is insurance that protects a lender from the risk of mortgage default, and is typically required when a loan's loan-to-value ("LTV") ratio is more than 80%.

4. The Homeowners Protection Act of 1998 ("HPA") specifies disclosures for PMI and the terms and conditions by which PMI may be cancelled.

5. One of the ways in which PMI may be cancelled is called automatic termination. It occurs when the principal balance of the loan – based on an amortization schedule from origination – reaches 78% of the value, at origination, of the property that secures the loan. 12 U.S.C. § 4902(b). The date this occurs is called the termination date, which the parties have termed the “Automatic Termination Date.”

6. Servicing of Plaintiff’s Loan was transferred to Green Tree on June 1, 2013. Prior to servicing transfer, Plaintiff obtained a modification of his loan under the Home Affordable Modification Program (“HAMP”).

7. Plaintiff contends that his PMI should have automatically terminated on January 1, 2014. Therefore, Plaintiff alleges, Green Tree has violated the HPA and the West Virginia Consumer Credit Protection Act by continuing to charge Plaintiff a monthly premium for PMI.

8. Green Tree contends the date that Plaintiff’s PMI will automatically terminate, assuming Plaintiff remains current on his monthly payments, is February 1, 2020. Accordingly, Green Tree has not violated the HPA nor the WVCCPA, and Plaintiff’s Complaint should be dismissed with prejudice.

9. Green Tree is filing the following Exhibits and Memorandum of Law in support of its Motion:

Exhibit A Stipulated Facts

Exhibit A-1 Plaintiff’s Private Mortgage Insurance Disclosure,
executed August 24, 2006

Exhibit A-2 Plaintiff’s HAMP Loan Modification, dated September 8, 2010

Exhibit B Affidavit in Support of Green Tree Servicing, LLC’s Motion for Summary Judgment

Exhibit B-1 Excerpts from the Fannie Mae Single Family Servicing Guide,
4/8/2015

Exhibit B-2 Amortization Schedule based on loan modification terms

Green Tree Servicing, LLC's Memorandum of Law in Support of Its Motion for Summary Judgment

WHEREFORE, defendant Green Tree Servicing, LLC requests this Court to grant it summary judgment on the Complaint filed by Curt Rice and to grant such other relief as the Court deems appropriate.

GREEN TREE SERVICING, LLC
By: Spilman Thomas and Battle, PLLC

s/ Debra Lee Hovatter
Debra Lee Hovatter (WVSB # 9838)
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CERTIFICATE OF SERVICE

I, Debra Lee Hovatter, counsel for defendant Green Tree Servicing LLC, do hereby certify that on April 30, 2015, I electronically filed the above **Green Tree Servicing, LLC's Motion for Summary Judgment**, and that the same has been served upon counsel of record via electronic notification through the Court's CM/ECF system, as follows:

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Counsel for Plaintiff

/s/ Debra Lee Hovatter
Debra Lee Hovatter (WV Bar No. 9838)